

REMARKS

Claims 1-15 and 24-29 are currently pending, although claim 3 has been withdrawn from consideration. Given that claim 3 depends from method claim 1 which is currently undergoing prosecution, Applicants respectfully request rejoinder of this claim at this time.

The Office Action rejected claims 1, 2, 4-15 and 24-29 under 35 U.S.C § 103 as obvious over U.S. patent 6,641,824 (“Duggan”) in view of Biol. Pharm. Bull, 25(10): 1307-1310 (October 2002)(“Gul”). In view of the following comments, Applicants respectfully request reconsideration and withdrawal of this rejection.

Gul was published in October 2002. Thus, its effective date is no earlier than October 1, 2002. Submitted concurrently herewith at Tab 1 is a Rule 131 declaration from a member of the assignee’s, L’Oréal’s, patent department. This declaration demonstrates that a draft of the above-referenced patent application had been completed and distributed for review prior to October 1, 2002. The significance of this draft patent application is two-fold.

First, the draft patent application evidences and corroborates conception of the claimed methods prior to October 1, 2002, in France, a WTO member country. (See, *Burroughs Wellcome Co v. Barr Laboratories*, 40 F.3d 1223, 1230 (Fed. Cir. 1994) attached at Tab 2).

Second, the draft application evidences reduction to practice of the claimed methods prior to October 1, 2002, in France, a WTO member country. (See, *Hyatt v. Boone*, 146 F.3d 1348, 1352 (Fed. Cir. 1998), attached at Tab 3).

Thus, pursuant to 35 U.S.C. § 104, the attached Rule 131 declaration and draft application demonstrate both conception and reduction to practice of the claimed methods in France prior to October 1, 2002, meaning that the inventors were indisputably in possession of

the claimed methods for treating wrinkles prior to October 1, 2002. Accordingly, Gul has been antedated, thereby removing it as a prior art reference. In view of this, Applicants respectfully submit that the § 103 rejection should be reconsidered and withdrawn, particularly in view of the fact that the Office Action has recognized that Duggan neither teaches nor suggests the claimed carbonyl amine compounds.

Notwithstanding the above, nothing would have motivated one skilled in the art to attempt to utilize the claimed carbonyl amine compounds in the claimed methods for treating wrinkles with the expectation that effective wrinkle treatment would result. It is only through improper hindsight, using the present application as a guide, that any motivation or suggestion to use the claimed compounds in the claimed methods could possibly found. Applicants respectfully submit that under such circumstances, the § 103 rejection is improper and should be withdrawn.

This is particularly true for claims 10 and 25-29. These claims all require the presence of specific amounts of the claimed carbonyl amine compound, amounts which are useful in treating wrinkles. Because none of the art teaches or suggests that the required amounts of the claimed compounds would possess anti-wrinkle activity, none of the art could teach or suggest using such effective amounts to treat wrinkles. Contrary to the Office Action's assertions, it is not merely a matter of optimizing concentration levels of the claimed compounds. Without any motivation to treat wrinkles, one skilled in the art would not have been motivated to optimize concentration levels for treating wrinkles.

Finally, none of the cited art teaches or suggests the required concentration ranges of the claimed compounds. Thus, the combination of references cannot, as a matter of law, result in the

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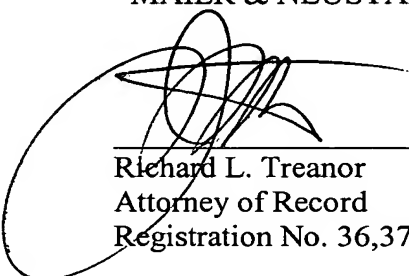
treatment methods claimed in claims 10 and 25-29 – the essential element of concentration range is missing from the cited references.

For all or the above reasons, independently and together, Applicants respectfully request reconsideration and withdrawal of the pending claims under § 103.

Applicants believe that the present application is in condition for allowance. Prompt and favorable consideration is earnestly solicited.

Respectfully submitted,

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